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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

NO. 195

COLUMBUS & GREENVILLE RAILWAY CO., ET AL., Petitioners and Appellants,

VS.

W. J. MILLER, STATE TAX COLLECTOR FOR THE USE OF THE MISSISSIPPI LEVEE DISTRICT,

Respondent and Appellee.

MOTION FOR PERMISSION TO FILE SUPPLEMENTAL BRIEF
and
SUPPLEMENTAL BRIEF OF APPELLEE AND RESPONDENT

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MOTION FOR PERMISSION TO FILE SUPPLEMENTAL BRIEF

Comes now W. J. Miller, State Tax Collector, for the use of the Mississippi Levee District, respondent and appellee in the above styled cause, by his counsel of record, and moves the Court for permission to file herewith a supplemental brief and assigns as the reason therefor the following: Since the filing of the briefs in this cause the Supreme Court of the State of Mississippi has rendered a decision in the case of W. J. Miller, State Tax Collector, vs. Yazoo & Mississippi Valley Railroad Company, dealing with the questions before the Supreme Court of the United States in this case, and it is the purpose to set forth the opinion of the court in full in the supplemental brief.

Respectfully submitted,

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J. ED. FRANKLIN,
LAMAR F. EASTERLING,
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SUPPLEMENTAL BRIEF OF APPELLEE AND RESPONDENT

On Monday, February 23, 1931, the Supreme Court of the State of Mississippi rendered a decision in cause No. 28,812, styled *W. J. Miller, State Tax Collector, for the use of the Mississippi Levee District, v. Yazoo & Mississippi Valley Railroad Company.*

As shown by the opinion of the State Court, the railroad companies have not in the past, and do not now pay any ad valorem tax in the levee district. The State Tax Collector was attempting to collect an ad valorem tax from the railroad companies and for this reason it would have

been unfair to have made the statement in the original briefs that no ad valorem taxes have been paid by the railroad companies. However, the State Court has held that the railroad companies in the levee district are liable only for the mileage tax; that is, the mileage tax paid by the railroads is in lieu of any and all other taxes in the district and constitutes the only tax paid by railroad companies.

This decision, therefore, we think completely settled all questions involved in the case now being presented to the Supreme Court of the United States.

There is no doubt as to the constitutionality of a statute which places all railroads in one class for the purpose of taxation and assesses only a mileage tax on the property in lieu of all other taxes.

If this court should hold that the Mileage Tax Act of 1886 as amended by the Act of 1914 is unconstitutional, it would mean, therefore, that the petitioner and appellant, Columbus and Greenville Railway Company, would pay no taxes of any kind or character in the levee district, or if this court should reverse the decision of the Supreme Court of Mississippi and hold the amendment of 1926 valid, it would mean that the only tax paid by the Columbus & Greenville Railway Company to the Mississippi Levee District would be a mileage tax of $50.00 a mile, or an aggregate of $910.50 per annum, a discrimination in favor of the said railroad company so palpably and arbitrarily unfair as to admit of no doubt of its unconstitutionality.

We copy below the full text of the opinion rendered by the State Court:

W. J. Miller, State Tax Collector, vs. Yazoo & M. V. R. R. Co.

"The Mississippi Levee District was created on November 27th, 1865, at which time there was no railroad within its territory. The railroad, of which appellee is the successor in title, was constructed therein during the year 1885. At that time the manner of taxation for levee purposes, in so far as ad valorem taxes were concerned, was as provided in Sec. 5, Chap. 107, Laws 1878, which provision made an ad valorem levy as follows:— 'A uniform ad valorem tax of not more than five mills upon the assessed value of all property, real and personal, lying and situated in the counties' (naming them) 'as the same shall appear upon the assessment rolls of said counties respectively'.

"In the year following the construction of the railroad, the Legislature enacted Chap. 7, Laws 1886, under which the mileage method of taxation was adopted for said levee district in respect to railroads. A tax of $100.00 per mile upon railroads was thereby levied, and it was expressly provided that this tax should as to railroads be in full of all levee taxes.

"Although in succeeding years the levee laws went through the process of numerous amendments, there is no question but that throughout all of these changes the railroad levee tax in this district remained exclusively on the mileage basis, until the passage of Chap. 125, Laws of 1908, when the Act of 1886 was amended so as to raise the levee mileage taxes to the sum of $200.00 per

mile. In this Act of 1908 there was omitted that express provision which had for twenty-two years theretofore been in all these acts that is to say, the provision that the mileage tax should be in full of all levee taxes. The Act of 1908 was simply silent on that point. Nevertheless, the levee board and all the administrative and executive officers charged with any duty in respect to the revenue of the district construed the Act of 1908 as having made no change in the law as regards the effect that the mileage tax of $200.00 per mile was in full of all railroad levee taxes; and taxes were collected from the railroad exclusively on that basis. Six years thereafter and by Chap. 282, Laws 1914, the law was again amended, using the identical terms of the Act of 1908, except that the mileage tax was raised to $350.00 per mile. This is the last legislative material to the question before us. The Railroad has continued to this day to pay its levee taxes on the mileage basis, and this suit is by the state tax collector to recover, in addition, the general ad valorem tax on the assessed valuation of the railroad as assessed by the state tax commission.

"Although the foregoing history of the legislation on this subject is but a thumb-nail sketch, enough is shown to disclose that from the beginning of the existence of railroads in the district the mileage basis has been the original and the uniformly observed method of railroad taxation for levee purposes in that particular district. Beginning with the first railroad levee act of 1886 down to this date, the subject of railroad levee taxes in that district has been separately treated in separate acts, and always as to general ad va-

lorem taxes the provision has been that these taxes shall be upon the property real and personal 'as the same shall appear upon the assessment rolls of said counties respectively.'

"It appears to us, therefore, as a question which admits of some considerable doubt in the matter of statutory construction whether these statutes, all of them taken together, even after 1908, do not of themselves confine railroad levee taxation in this particular district solely to the mileage basis. In this situation of admissible doubt the construction uniformly placed upon the statute of 1908, and uniformly followed by every executive and administrative officer charged with its execution and administration must now be accepted as the correct construction, in view of the fact that in 1914, six years thereafter, the statute was re-enacted in exactly similar language, *U. S. v. Cerecedo, etc.*, 209 U. S. 337, 339, 52 L. ed. 821; *U. S. v. Polk* 204 U. S. 143; 51 L. ed. 411.

"The principle that the re-enactment by the legislature, without change, of a statute, not free from doubt, which had previously received long continued executive and administrative construction, is an adoption by the legislature of that construction, has an added strength as applied to this case; because under Sec. 234, Const. 1890, no bill affecting the revenues of the levee district can be considered by the legislature until it has been published in a newspaper in the district for four weeks prior to the introduction thereof in the legislature. Therefore, when the bill in 1914 was introduced, it had been previously published to all the people of the district; and it could be easily seen that it was in the same language as the Act of 1908 un-

der which it was known, or could have been known, to every taxpayer in the district that the uniformed and unquestioned previous construction for the past six years—long enough to give everybody notice and knowledge—had been that the mileage tax was the only railroad levee tax. If then there was any purpose either in the legisalture or on the part of taxpayers to change the meaning and effect under the Act of 1914 so as to include the general property ad valorem taxes in addition to the mileage tax, then was the time to do it, and in express language. But this was not done, has never since been done, and we deem the issue as now foreclosed."

Respectfully submitted,

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